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H – 152

International Court of Justice

H0152-0002

Official Transcript of the International Military Tribunal in the matter of The United States of America, the French Republic, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics against Hermann Wilhelm Goering et al, Defendants, sitting at Nurnberg, Germany, on 8 June 1946, 1000-1300, Lord Justice Lawrence presiding.

THE MARSHAL: May it please the Tribunal, the report is made that the defendants Hess and Raeder are absent.

THE PRESIDENT: With reference to the applications for witnesses and documents that were made the other day in court, I will take them in the order in which they were dealt with in Court.

The first application is the application of Kaltenbrunn and the three witnesses which he asks for are allowed: Tiefenbach Kandruth, and Strupp.

The application of the defendant Schirach is rejected.

The application of the defendants Hess and Frank for General Donovan is rejected.

The applications of the defendants Speer and Keitel are granted, and the application of the defendant Jodl for an affidavit I think was granted yesterday.

The application of the defendant Goering for two witnesses, Stuckhardt and Burmath is granted, but on the condition that ~~these~~ three witnesses only may be called upon the subject concerned

With reference to the application of the defendant Hess, the Tribunal orders as follows:

The affidavit of the former Ambassador Gaus of the 17th of May 1946 is rejected on the ground that it is not in accordance with the permission given on May 14, 1946, but purports to incorporate not merely the substance but also the form of the secret treaties, and the form embraced in the affidavit is not identified as being correct either by a person who made the copies or by one who compared them with the originals. Such copies cannot be received in evidence, and the Tribunal has twice ruled to this effect.

H0152-0003

The matter of importance to the issues before the Tribunal is not the form of the treaties, but their contents, and evidence of their contents is already before the Tribunal by the testimony of three witnesses. The admission of this affidavit would add nothing to the proof before the Tribunal. The same is true of the proposal to call, as a witness, Gaus, who would only support evidence as to the contents of the treaties which has not been contradicted.

The motion of the 23rd of May 1946 to reconsider the Tribunal's former decision, and the motion of the 24th of May 1946 to call Gaus as a witness, are accordingly denied.

There is one other matter with which the Tribunal proposes to deal, and it is this: In the future, counsel for the organizations which the Prosecution has asked the Tribunal to decla to be criminal will not be permitted to examine or to cross examine any witnesses other than the defendants in this court. If they wis to examine or to cross examine those witnesses, they must call ther before the commissions which are now sitting for the taking of evidence on the questions with which the organizations are concerned.

That is all.

H0152 - 0004

DR. KUBOSCHOK (Counsel for defendant von Papen): I should like to voice one request for the case of von Papen.

On the 6th of June I submitted a written request. This was discussed with the prosecution, and the General Secretary has advised me to bring this matter to the attention of the Court.

Prince Erbach-Schoenberg has filled out an interrogatory. His answers, however, are partially incorrect and sometimes misleading, and therefore a supplement is necessary. I am suggesting that Prince Erbach -- who is in the American occupied zone in Gmunden, Austria -- be transported to Nurnberg and that he be interrogated, outside of this Court but in the presence of the prosecution, to supplement this interrogatory.

My deputy has received a letter from Graf Feil -- who is in Bad Ischl, also in the American occupied zone of Austria, not far from Gmunden, the residence of Prince Erbach -- in which he has testified and made statements in detail about the contacts which the defendant von Papen had with the circle of the assassins of July 20th.

Since this question was raised by the witness Gisevius, the defense feels that it is forced, even though otherwise we would not stress this fact, to discuss thismatter in the course of evidence. Most likely this matter will be covered through an affidavit.

At the same time, I am asking that Count Feil, together with Prince Erbach, be transported to Nurnberg so that, in the presence of the prosecution he can depose an affidavit. The transporting here of both of these witnesses is absolutely essential, because the case of von Papen is imminent and it is also impossible to take care of these matters by correspondence.

THE PRESIDENT: Dr. Kubuschok, will you draw our attention to the particular points in which you say that the interrogaroty of Prince Erbach-Schoenberg is incomplete or misleading?

DR. KUBUSCHOK: In connection with one of the preveding questions of this interrogatory, Prince Erbach answered that it had been the wish of the defendant von Papen to have the solution of his task brought about through a peaceful development rather than through force. Then, in connection with

H0152 - 0005

a question which follows, as to whether the defendant von Papen acted in accordance with these basic political principles, the witness answered as follows: "As long as I was there, I had the impression that the defendant von Papen acted in accordance with these basic principles. That means the bringing about of connections in a peaceful manner rather than with force."

This last statement is contrary to the first half of his answer. Apart from that, this latter sentence --

THE PRESIDENT: Are you saying that that answer is incomplete or contradictory?

DR. KUBUSCHOK: There is a contradiction in the second half. "Rather than by force" is contrary to the first half of his reply, since he said that he acted according to these principles.

THE PRESIDENT: The answer that I have got is: "As long as I was there, I had the impression that the defendant von Papen acted according to this policy of establishing relations through peaceful means rather than force."

There is nothing contradictory in that, in English.

DR. KUBUSCHOK: In the German text it says "rather than with force." In the English version the objection is to the word "rather".

THE PRESIDENT: It means the same thing. It means that he wanted to establish the relations by peaceful means rather than with forceful means. "Not by force" he means.

DR. KUBUSCHOK: In my text it says "rather than by force".

THE PRESIDENT: That is the same thing.

DR. KUBUSCHOK: This version might cause the assumption that the defendant von Papen did not even consider or contemplate peaceful means. We want to prove, in accordance with the foregoing sentence, that he rejected other means than peaceful ones.

However, if the High Tribunal will give this interpretation as was just uttered by the Court, then I have no further objections and I do not wish to press this point.

THE PRESIDENT: It couldn't mean anything else in English. I don't know what it could mean in German.

H0152 - 0006

DR. KUBUSCHOK: In the German version it would mean: "I would prefer peaceful means, but in the last analysis, if need be, other than peaceful means would have to be considered."

That would be the interpretation of the German version. We want to establish and confirm that none other than peaceful methods were ever considered.

SIR DAVID MAXWELL-FYFE: To save any trouble, I should like to assure the Tribunal that the prosecution accepted the answer in the sense which Your Lordship has just put it. We shouldn't suggest for a moment that Prince Erbach would make any other answer than in the sense the Tribunal has accepted it.

THE PRESIDENT: Perhaps a way of meeting the difficulty would be if you would agree to read the words in the sense "and not by force."

SIR DAVID MAXWELL-FYFE: If your Lordship pleases.

THE PRESIDENT: Yes.

DR. KUBUSCHOK: Then, of course, I quite agree, and I should like to have the decision of the Tribunal as to whether Graf Feil will be transported here so that he can depose an affidavit.

THE PRESIDENT: You mean the other witness?

DR. KUBUSCHOK: The second witness, Count Feil, who wrote this letter, which we wish to submit to the High Tribunal in the form of an affidavit.

THE PRESIDENT: We will consider that when we have heard Sir David.

Are there any other inconsistencies or contradictions which you wish to draw our attention to in the Prince's interrogatory?

Has the letter of Count Feil been translated?

DR. KUBUSCHOK: Not yet, My Lord, but it is a rather simple letter. However, we can not prove the identity of the letter, and that is why we wanted the affidavit.

H0152 - 0007

THE PRESIDENT: Would the letter itself be sufficient if the prosecution were prepared to admit the letter?

DR. KUBUSCHOK: Yes, it would suffice, My Lord. It would quite suffice; the contents are sufficient. Even if we had an affidavit, we could not prove anything other than what is actually contained in the letter already.

SIR DAVID MAXWELL-FYFE: I have no objection to admitting the letter, My Lord.

THE PRESIDENT: Very well. Thank you, Sir David.

Then the interrogatories of Prince Erbach will be amended in the way that we have indicated, and the letter of Count Friedrich Karl von Feil will be admitted.

SIR DAVID MAXWELL-FYFE: I wonder if Your Lordship will allow me to mention one point that arose on Tuesday.

Your Lordship may remember that the defendant Jodl said that he had not been permitted by the prosecution to mention a document. My Lord, a misunderstanding arose in this way. Your Lordship may remember that at an early stage, in dealing with witnesses and applications, I objected to general evidence of shackling because I said that the prosecution had not led evidence as to shackling by the Germans as part of their case, and therefore it did not seem to me an issue that need be pursued.

I put that forward, and Mr. Roberts, who was dealing with the later stages, adopted the same line.

Apparently that was understood as including an objection to the Wehrmacht order that was part of the preparations for the commando order, and I said so at the time.

I should not like the Tribunal to think I was making any reflection on the learned professors who are conducting the defendant Jodl's case, or putting forward that they had made a basic accusation against me. I thought, therefore, the Tribunal would allow me just a moment to explain that it was a misunderstanding and that neither of us feel that we have been injured in any way by the other by what has been said.

THE PRESIDENT: Is there anything further that needs to be done with reference to the admission or introduction of ths?

SIR DAVID MAXWELL-FYFE: Not at all, because I waived any objection to it, and the defendant Jodl was permitted, in giving his evidence, to make a full explanation as to it. I only wanted it understood how the misunderstanding had arisen, and that I did not feel that Professor Exner or Professor Jahrreiss had made any baseless charges against me in so doing.

THE PRESIDENT: Yes.

SIR DAVID MAXWELL-FYFE: Thank you very much.

H0152 - 0008

H0152-0009

DR. NELTE (Counsel for Defendant Keitel): I should like to put one question to the witness.

FREIHERR von BUTLAR BADENFELS -- Resumed.
DIRECT EXAMINATION -- Continued.

BY MR. NELTE:

Q Witness, the accusation has been raised against the defendant, Field Marshal Keitel, that "rather than to protect his subordinate officers, he threatened them with turning them over to the Gestapo".

Can you give us facts about this accusation which show that this was not the case?

A I can testify that Field Marshal Keitel was always very generous to the officers of the Wehrmacht Fuehrungs Stab, of the Operational Staff of the Wehrmacht; and as far as Colonel Minst was concerned, who was closely connected with him as the Chief of his division, there was almost a fatherly relationship between them. I can also say that I myself, with Lieutenant Colonel Ziehrvogel, one of the workers of my staff, in the year 1945, on the basis of factual dissent with the staff of the Reichsfuehrer SS, was accused in a letter to Field Marshal Keitel that I had disturbed the cooperation and that I had sabotaged the conduct of the war; and in the reply, Field Marshal Keitel requested us and said that he would take the complete responsibility for everything which his subordinate officers were doing.

DR. NELTE: Thank you very much. I have no further questions.

THE PRESIDENT: Cross examination.

MR. ROBERTS: My Lord, I do not propose to cross examine. That, of course, will not be taken that the prosecution is accepting the truth of this evidence at all. But the whole question of atrocities in the East has been so thoroughly covered by evidence and by document, My Lord, I think it would be wrong and repetitious if I cross examined.

THE PRESIDENT: Yes, Mr. Roberts.

MR. ROBERTS: My Lors, there was one other point. Dr. Laternser, in the interests of saving time, produced an affidavit of this witness dated the 20th of May, 1946.

Mr Lord, of course, we are most anxious to assist Dr. Laternser in any effort on his part to save time, and we do not put any objection to this affidavit. But I am not quite certain as to what the affidavit is, and as to

H0152 - 0010

whether it has been put in as an exhibit, in which case if should be given a number, or whether it should go to the Commission.

THE PRESIDENT: I do not think it is necessary for it to be given an exhibit number. It was put to the witness, and he says the evidence was correct. That enables Dr.Laternser to refer to it hereafter.

MR. ROBERTS: Yes, My Lord. Then I propose the prosecution should get copies. Could that be conveniently arranged?

THE PRESIDENT: Of course.

MR. ROBERTS: We, of course, have not received any.

Mr Lord, Mr. Dodd is pointing out that we have not seen this affidavit. We do not know what it contains. But we will get a copy, and if we have any further application to make, we can make it.

THE PRESIDENT: When an affidavit is used in this way and put to a witness who is in the witness box, of course the affidavit ought to be supplied to the prosecution in order that they may see what is in it, and so be able to cross examine if they wish to do so.

MR. ROBERTS: Yes.

THE PRESIDENT: That has not been done in this case. The best course would be for the affidavit to be supplied to the prosecution, and they may, if they wish, apply to examine on it before the commission.

Do you think it is necessary? Perhaps you could see the affidavit and decide whether it is necessary to keep the witness here.

MR. ROBERTS: My Lord, I respectfully agree.

THE PRESIDENT: And we shall hold the witness in Nurnberg?

MR. ROBERTS: My Lord, we accept the invitation to examine the affidavit over the week-end, and then, if necessary, we could make an application on Monday.

THE PRESIDENT: Yes; that is quite all right.

The witness can retire.

THE PRESIDENT: Dr. Jahrreiss, will you examine the next witness?

DR. JAHRREISS (Counsel for Defendant Jodl): Yes, if it is the wish of the High Tribunal. With the permission of the High Tribunal, I wish to call Major Buechs as my next witness.

H0152-0011

MAJOR HERBERT BUECHS, a witness, took the stand and testified as follows:

BY THE PRESIDENT:

Q Will you state your name, please?

A Herbert Buechs.

Q Will you repeat this oath after me:

I swear by God, the Almighty and Omniscient, that I will speak the pure truth and will withhold nothing and add nothing.

(The witness repeated the oath.)

THE PRESIDENT: You may sit down.

DIRECT EXAMINATION

BY DR. JAHRREISS:

Q Witness, what position did you have in the last years of the war?

A From the 1st of November, 1943, I was a General Staff officer of the Luftwaffe, with the chief of the Wehrmacht Fuehrungs Stab, the Wehrmacht Operational Staff. And in that capacity, I was an adjutant with Colonel General Jodl.

Q And were you in this position until the end of the war?

A I was in this position until the end, until my arrest on the 23 rd of May, 1945.

THE PRESIDENT: Witness, would you consider the lights? When that yellow light goes on, it means that you are going too fast; and if you would try to make a pause after the question comes through to you, that would be much better.

THE WITNESS: Very well.

BY DR. JAHRREISS:

Q Witness, during this time in which you were in the Fuehrer's headquarters, did you see that the headquarters was in different areas?

A Yes. In East Prussia, I was in the headquarters in Berlin, and in the year 1944, in Berchtesgaden.

Q It has been mentioned that at the Fuehrer's headquarters, there was a party clique allegedly. Do you know anything about that?

A If I understand with that expression a circle of people which I would choose to call Fegelein, Bormann and Burgdorf.

H0152-0012

Q You would say that that was a clique?

A These were three gentlemen who were in very close personal and official contact, and to the outside world created this impression of being a clique.

Q Were they in a very close personal relationship with themselves or with others?

A Not only among themselves did they have a close relationship, but I also observed that these three gentlemen had a very strong influence on Adolf Hitler himself.

THE PRESIDENT: Dr. Jahrreiss, would you ascertain the names of the three again? They did not come to us quite clearly.

DR. JAHRREISS: Yes.

BY DR. JAHRREISS:

Q Major, will you please give us the names distinctly of these three gentlemen you just mentioned?

A Fegelein: He was the liaison officer, with Himmler, to Adolf Hitler. Then Bormann, who was the head of the party chancellory and the deputy of the party; and General Burgdorf, who had a dual position as chief of the army personnel office and at the same time as chief adjutant of the Wehrmacht with the Fuehrer.

Q Did Colonel General Jodl have an official connection with each of these three gentlemen?

A I should start with Fegelein. Fegelein as liaison officer of Himmler was, as far as the Fuehrer was concerned, that man to whom he turned in all questions of material, equipment, and personnel of the Waffen SS divisions. When these questions were discussed and the use of these divisions in the course of the military situation came up, and in this connection when the situation reports came up, there were many common points within the sphere of work of Fegelein. But, on the other hand, the general official connection between Jodl and Fegelein was very, very slight.

H0152-0013

Q And how about Bormann?

A As far as Bormann was concerned, as Deputy of the Party, Colonel General Jodl always strongly delineated his sphere of influence. If there were unjustifie accusations against the Wehrmacht or if there was any interference, he always rejected this interference or these accusations. It witnessed this especially while the war was being carried on on German soil. There were frequently frictions with those Gauleiters who had been designated to be Reichs Commissars, and on this occasion it witnessed that Colonel General Jodl, when he received complaints from Bormann or letters from Bormann, dealt with these letters in a rather abrupt marginal note and returned these letters, and in that way he showed his attitude. If he was not successful in dealing with the matter in that way, he was not slow in telling the Fuehrer just how he felt, and then he brought about a decision on the Fuehrer's part in writing.

Q And the third of these gentlemen mentioned, Burgdorf?

A As far as General Burgdorf was concerned, to my recollection, Colonel General Jodl had very little official contact with him, although Burgdorf had to handle the personnel, the filling of positions, and he discussed these matters with the Fuehrer. In this case, I saw that General Burgdorf first of all discusse these matters with the Fuehrer alone, so that Colonel General Jodl had very, ver little influence in that direction.

Q Now I should like to know from you, Witness, how the personal relation was between Colonel General Jodl and each of these three gentlemen?

A Jodl rejected Fegelein; he was averse to him and I believe Jodl, even at that time, fully realized his character defects. I was there when he called Fegelein to account and put him in his place. As far as Bormann is concerned, I should say Colonel General Jodl had no relationship with him at all. I believe there was no association outside the official one, no personal relationship at all. And the same things that I said about Fegelein I believe also applies to the relationship with General Burgdorf, whom Colonel General Jodl did not like personally.

Q Now I shall turn to a different point. Witness, do you know anything about this matter, that in the last phase of the war there were considerations that certain hostile aviators, which were in hand, would be turned over to the popular rage? Did you hear about that?

H0152 - 0014

A Yes. I recall in the spring of '44, at Berchtesgaden, the Fuehrer, in a rather heated way, demanded that Allied flyers who made emergency landings in Germany not be protected by the Wehrmacht against the enraged populace. This demand had been based on reports according to which a Kreisleiter of the Party and an officer of the Luftwaffe had protected an Allied aviator. At that time the Fuehrer made this demand in a very sharp and a very heated manner. He demanded that the Wehrmacht issue corresponding orders so that a stop would be put to this once and for all.

Q Did Colonel General Jodl have the demand put to him also by Hitler?

A This demand was made at a conference at which Jodl was present, but Colonel General Jodl did not have any direct connection with the treatment of this question for this was not a purely military matter with which Jodl would be concerned.

Q Did the Colonel General make any statement at all in this report?

A Colonel General Jodl, as well as all other gentlemen, rejected this demand and, on his part, did everything possible in order to attempt to dissuade the Fuehrer from this demand, and immediately he tried, by taking a critical attitude, to establish the action which would be taken so as not to infringe on International Law in dealing with aviators.

Q I really do not need to ask you about this for we have proof through documents in this matter, but tell me, was it possible, if, as you have described, Hitler was enraged and stormed and demanded a decree, was it possible to pursue a delaying action?

A In the case in which the Fuehrer, in the heat of his first rage, demanded something like that, it was impossible for these gentlemen to whom this demand was put to do anything at that moment, to contradict or perhaps to refuse

H0152 - 0015

the carrying through of this order. There was nothing left for them to do, and this suggestion was put by Jodl frequently, that one would have to try, by the supplying of arguments, of data and facts and counter arguments, and through the presentation of attitudes of agencies and officers who were concerned with this -- that that material should be gathered and, in a quiet and favorable hour, approach the Fuehrer on this matter once more and try to dissuade him from his extravagant and exorbitant demand. At the outset, this resulted in a rather lengthy exchange of letters, and the files of the various departments involved were sent back and forth, everything with the idea of delaying the matter as much as possible and, if possible, shelving the matter completely. My impression, as far as the treatment of the terror flyers was concerned, was this, that in this case we succeeded absolutely, even though the Fuehrer again and again had his attention called to this question through reports and wanted the decree to be carried through.

Q Did not a decree like that come through ?

A I know of no order like that at all.

Q Can you cite an incident in which it was made clear or obvious that a decree like that actually was never issued ?

A On one occasion I personally was called to account by the Fuehrer, in August of 1944, when, after an air attack on Munich, Fegelein, in a rather drastic manner, described low level attacks to him and reported to him that in the flack resistance two Allied aviators had parachuted and had been captured by one of the flack people. And Fegelein said that he had called this man to account and asked him why he had not shot the flyers, and this man said he had not done so because he hadn't had an order to that effect. At that moment I interpolated on my own account that there actually was no such order; and then the Fuehrer accused me in the strongest manner that the leading officers of the Wehrmacht had not issued a decree like that, and then he again demanded the issuing and execution of that order.

Q Did it actually take place then ?

A Not even then, for that was the period after the 20th of July, the time of the campaign in the West where burning questions were in the foreground, and these questions overshadowed the problem of the treatment of terror flyers; this problem was shelved in favor of the burning questions of the West.

H0152 - 0016

Q Witness, do you know about an incident in Berlin, I believe in March of 1940, which allegedly took place in the Reichschancellery, where the Fuehrer again bemoaned the fackt that despite his demand this decree had not been issued?

A I recall that in March of 1945 the Fuehrer again talked about this problem, in a very heated manner, to General Koller, who was the then Chief of the General Staff of the Luftwaffe. I was not present at the beginning of this conversation. I was called in, however, and heard the Fuehrer say approximately the following: that on the basis of the attitude taken by the Wehrmacht and espaecially the attitude taken by the Luftwaffe, it had not beenpossible for him to counteract the terror of the Allied flyers over Germany through a counter terror.

Q Just a moment, Witness. You said that you had not been present at the entire discussion.

DR. JAHRREISS: Mr. President, we have a document which we want to submit. It is an interrogatory to be found in the document book, Volume 2, Page 178, which is the testimony of General Koller, Chief of the Luftwaffe. This testimony, under Figure 4, which is on Page 180 of the document book, shows all the details of interest, and it shows this discussion in Berlin, which is of tremendous importance. This conversation took place in the main room and the other part took place in the ante-rooms; and there was also a conversation with Goering telephonically. I should like to have the permission of the High Tribunal, in order to save time, to present this matter in toto, even through the witness on the stand was present for only a part of this conversation, as the last sentence shows Jodl is deeplyconcerned in this whole document. And I believe, Mr. President, we can save time if I may deal with this matter in toto now and present it now.

H0152 - 0017

First of all, I should like to read the first question to General Koller, which is to be found on page 179. Here the witness was asked:

"How long have you been Chief of the General Staff of the Luftwaffe?"

The answer is on the next page and is:

"From 1 September 1943 until 3 September 1944 I was Chief of the Air Force Operational Staff, from 23 November 1944 Chief of the General Staff of the Air Force."

Question 5, and that is the question which concerns us, is on page 179:

"Do you recall that about March 1945 in the bunker of the Reich Chancellor the Fuehrer reproached you and the Luftwaffe because such an order was not given?

Answer, page 180?

"Yes, I remember quite exactly that about the beginning to the middle of March 1945, during the situation report a notice taken from the Allied Press Reporter Survey was laid before the Fuehrer by Bormann. It read somewhat to this effect:

"An American combat aviation crew shot down over Germany a short time previously was overtaken by advancing American troops. They had declared that they were mis handled by indignant persons of the population, had been threatened with death and probably would have been killed, if German soldiers had not delivered them and taken them under their protection.

"Bormann further pointed out to the Fuehrer in a few words that this confirmed that soldiers in such cases step in against the population.

"Hitler, rather angry, turned to me and said excitedly:

"I have already once ordered that bailing-out bomber crews are not to be protected against the population. These people only murder German women and children. It is unheard of that German soldiers should take measures to protect these murderers against their own population which is acting from justified hate. Why were my orders not carried out?'

"Surprised by this attack I replied somewhat like this:

"'I know of no such order, moreover it would be a practical impossibility

"Hitler, turning toward me expressed himself, very loudly and sharply,

"'The reason why my orders are not carried out is only the cowardice of the Luftwaffe, because the gentlemen of the Luftwaffe are cowards and are

H0152 - 0018

afraid that something might also happen to them. The whole thing is nothing more than a cowardly agreement between the Luftwaffe and the British and American fliers.'

"Hitler turned then also to Kaltenbrunner who happened to be present in the background, and speaking to him while partly looking at me continued:

"'I hereby order that all bomber crews bailed-out in the last few months and also all bomber crews bailing-out in future are to be turned over by the Luftwaffe to the SD and are to be liquidated by the SD. Anyone who does not carry out my orders or who takes action against the population will be punish with death and is himself to be shot.'"

"Hitler then further expressed in a general way his indignation and his conception. The assembled officers made a general impression of surprise and disapproval.

"After the Fuehrer's entourage had passed on, I requested an interview with Kaltenbrunner in the side passage way. Essential points:

"Koller: It is impossible to carry out those orders. The Luftwaffe wil have no more to do with it. I, under no circumstances, and I can say as muc for the Reich Marshal. It is entirely out of the question that the Luftwaffe puts its hand to it in any way.

"Kaltenbrunner: The Fuehrer has completely wrong ideas. Also, the duti of the SD are continually misunderstood. Those things are no concern of the SD. Moreover no German soldier would do what the Fuehrer demands. That is not in the German soldier's line. He does not kill prisoners; if individual fanatical party followers of Herr Bormann try to do so, the German soldier interferes. The Fuehrer has a completely false picture of the attitude of ou soldiers. Moreover, I will also do nothing in the matter myself. It would not occur to me at all. We must only see how we can get out of it, otherwis he will have a few of us transferred among the first. We must gain time. In one way or the other, I am going to leave Berlin immediately for a fairly long time.

"Koller: Then we are agreed on the main point. Your leaving Berlin is propitious. But we must have another way out as far as the Fuehrer is concerned, for it is possible that he may come back to his order tomorrow.

H0152 - 0019

Later on, if it gets worse and worse, we will have to see how to prevent the business, or what is going to happen to us.

"It was decided at my suggestion that no order along the lines commanded by the Fuehrer will be given to the Luftwaffe and the SD. None was given to the SD. In case the Fuehrer should revert to his order again, then, first of all, prevent further action through explanations of the following kind:

"All previously captured prisoners belonging to flying crews must not be handed over to the Luftwaffe, but scattered everywhere around under the contr of the Replacement Army Commander (BdE); time of capture not to be centrally known. Therefore, the establishment of a number of air personnel captured during the last months would be very difficult and time-consuming. Also, preparations must be made in detail for getting them out without attracting attention. The newly captured crews go automatically to interrogation center These are in a state of moving, owing to operations. Liaison is bad.

"Therefore, detailed discussions and agreements with the SD necessary. In order to preserve the appearance of discussion, the intelligence officer of the Luftwaffe (Ic des OKL) should go to a delegate of Kaltenbrunner, who, however, would first have to be appointed.

"After the Fuehrer's entourage, I spoke to Field Marshal Keitel in the entrance of the air raid shelter and said:

"'The Fuehrer's order is insane (Keitel remarked in between: "One can certainly call it that"). The Luftwaffe shall keep her escutcheon clean. The order cannot be carried out. I am convnced that the Reich Marshal is entirely of my opinion. To issue such an order and moreover with such a thr of punishment, only verbally. To an order of this kind he has to sign his own name. Whether or not it will then be carried out is an open question, in any case not by the Luftwaffe. Nor by the SD, either, I have spoken with Kaltenbrunner.

"Field Marshal Keitel: He will not sign such orders then, and the OKW always has to endorse everything. But I will be damned if I issue such an order."

"Koller: The Luftwaffe cannot join in this under any circumstances. We will never assume such a responsibility."

"Field Marshal Keitel: You are right. I neither. I must think over

H0152 - 0020

what I can do about it and how.

"The conversation was interrupted because Keitel was called to the telephone. Keitel was very indignant and annoyed about the Fuehrer's order.

"After refreshments in a corner of the air raid shelter I had to cross the antechamber of the conference room again to go to the cloakroom and the way out. Hitler by chance came out of the room, gave an order to an orderl and called me as I was passing by. The door to the conference room was open. Ley was sitting at the table.

"Hitler said to me:

"'I came back to my order once more. All of you must help me, it cannot go on like this any longer. The Luftwaffe, or at least the Reich defense

H0152-0021

has failed. What am I to do against the frightful bombing terrorism which is only murdering German women and children"

"KOLLER: The Air Defense and our crews do what they can and what is humanly possible. The neglect of air armament by us, the momentary technical and numerical superiority of the enemy, cannot be eliminated or altered overnight. When the searchlight-units finally become stronger, the air situation over Germany will improve for us."

"HITLER: I cannot wait for that. I can no longer be responsible before the German people for the continuation of this air situation. If these fliers realize that they will be liquidated as terrorists, they will think it over before flying here."

"KOLLER: It certainly will not improve the air situation, but on the contr make it worse."

"HITLER: No, what the Japanese have done is the right thing. In contrast to his behaviour at the gathering, Hitler was quiet again. He displayed an affable manner. From experience, one could talk with him better alone, than in presence of other people. I thought it was a good opportunity to attack the whole problem and declared:

"'If I am permitted to express my point of view, it is that this will not do. Such measures are in such brutal opposition to the education, feelings and thinking of all soldiers, that they cannot be carried out. One cannot fill soldiers with the articles of war and decent conduct and then order actions which go against everybody's grain. You must not forget my Fuehrer, that the enemy fliers also carry out orders and do their duty just as ours. If they are shot down or make crash landings, they are just defenseless and unarmed prisoners. How would we stand before the world? And the first measures of the enemy would be to treat our flying crews the same way. That is something we cannot answer for to our men and their relatives. All their willingness to serve and their discipline would collapse at one blow.'"

"Up to that point the Fuehrer had not interrupted me. After he had at first looked at me, he turned his look away, and seemed to be lost in his thoughts. But he had been listening and interrupted me here, and said quietly and in an earnest manner:

H0152 - 0022

"And so the Luftwaffe is still afraid. That is indeed quite all right, but I am responsible for the protection of the German people, and have no other means except this"

"Hitler turned around and went back into the conference room.

"After my arrival at the Luftwaffe Headquarters (Kurfuerst) I informed Colonel von Brauchitsch of the events and ordered him to report to the Reich Marshal about it as soon as possible. I myself could not reach the Field Marshal at that moment. During our conversation Brauchitsch also expressed a disapproving attitude towards the Fuehrer's order.

"Some one or two hours later the Field Marshal called me and began his conversation with the following words:

"'Tell me, has he finally gone completely mad?'"

"It was very clear who was meant. I personally reported once more to theReich Marshal about the principle happenings and the conversation with Kaltenbrunner and added:

"'I will not carry out this order or any activity connected with it. I will take pains to handle the situation so as to gain time first of all, in any case, and do everything possible to prevent any of us from falling under the wheels. Perhaps after the last conference the Fuehrer will not come back to his order any more. If he does, however, it will be very hard, and you will have to go to the Fuehrer yourself. What the Fuehrer ha ordered must not be allowed to happen in any case."

The Reich Marshal expressed himself as very much opposed to Hitler's attitude and agreed with me in every point. He ordered me to act as had been suggested, to inform him immediately at the proper time, and ended his conversation with these words:

H0152-0023

" This is all insane and cannot be carried out."

"h) Measures against Allied fliers on the basis of the above-mentioned Fuehrer's order have been adopted neither by the Luftwaffe nor by the SD. This order has not been made known, in my opinion, to the Replacement Army Command (B d E), or their offices, as the Replacement Army Command was not present at the Fuehrer's meeting and the order has not been passed on by the Army High Command (OKW).

"Hitler did nit refer back to his order later, either with the Reich Marshal, or with myself or my representative; nor, I think, with Kaltenbrunner either. To be sure, I have never sp to the latter again about this matter.

" Whether Hitler deliberately let the matter drop, or wheth he forgot about it under the pressure of events, I was unable t judge.

"i) Perhaps two or three weeks later there came to my knowledge a directive of the OKW -- I think a teletype -- in which, as I recall, mention was made of the eye-witness report that had given occasion to it. In it was disclosed that the Fuehrer had expressed his displeasure that German soldiers had acted against their people.

" No mention was made of the main point of Hitler's order. If I remember correctly, the order was signed by Keitel and is to be regarded as anything else than an attempt to cover himsel as far as the Fuehrer was concerned. In my opinion, General Jod had nothing to do with the entire affair."

Witness, as far as you were present at this meeting, was that picture presented by General Koller correct?

A I remember the following matters: In the Luftwaffe the' v is based on a mutual assurance, and that was the sentence whic' I remember strongly.

DR JAHRREISS: Thak you very muc\. I need not ask you any fur question on this point.

THE PRESIDENT: We will adjour now.

(A recess was taken.)

H0152-0024

Q Mr. Witness, I assume that you can still recollect the equipment, the furnishings in the offices of the Fuehrer's headquarters.

A Yes, I can still remember them.

Q In these offices of the Fuehrer and the Field Marshal, the Colonel General, and your own, were there maps on the wall?

A Yes, both in East Prussia, particularly the Headquarters, the Fuehrer had a physiographic map of Germany and then a polit map of Europe, and in the various other rooms there were simila maps.

Q Were maps hung up also of Germany?

A Yes.

Q And the bordering territory, on which concentration camps o penal institutions were indicated, say, for instance, with a blue ring?

A No, neither in the Fuehrer's Headquarters in East Prussia i in the Reichschancellery in Berlin nor at the Berghof in Bercht gaden have I seen such a map at any time.

Q On the 11th of May, 1946, the Munich radio -- at 12:30 midday broadcast a letter from a painter who had alleged that h had seen maps in the Fuehrer's Headquarter which could not be anything else but maps showing the location of concentration camps. Is that possible?

A That is quite out of the question.

Q Was there any detailed statement about that?

THE PRESIDENT: I don't think we need go into the broadcast fr Munich. We have no evidence of broadcast from Munich.

DR JAHRREISS: I am afraid I was misunderstood. I didn't ask hi whether he heard it, but I wanted to tell him how the public h come to that knowledge, that there were such maps. But I have n further questions?

THE PRESIDENT: What I was pointing out was that i ought not be referred to, as it is not in evidence. The fact which you al that there was a broadcast, ought not to be referred to.

H0152-0025

BY DR STAHMER (Counsel for the Defendant Goering):

Q Major Buechs, during the time you were a commanding officer attached to Fuehrer Headquarters were you present at the daily discussions of the situation?

A Yes, I participated in the daily military discussions.

Q Have you any recollection whether you were present during that conference on the 27th of January, 1945, during which the question was discussed as to what was to happen to the flyi personnel -- the RAF officers -- confined at Sagan?

A I can remember something like this: The question of clearin that camp on the approach of Russian troops must have been reported to Fegelein. These captured officers were asked whethe they wished to remain in the camp, to be handed over to the Russian Army, or whether in the course of clearing Silesia they wanted to be transported away as well. As far as I remember, th decided on the latter, that is to say, to join a transport upon was in what manner that transport was to be carried out.

Q Can you still remember the suggestions that were made regar that transport and who made them?

A I believe at that time the Fuehrer only said generally that these imprisoned officers could not be treated any better than our own people. The evacuation of Silesia in our own transports did not permit even the transport of our own population by mean of railway trains or large columns, and even in the winter the population had to use the road. And I think I remember that at that time the Fuehrer said that if these officers wished to be taken along on a transport then they would have to march just like the German civilian population.

H0152 - 0026

DR STAHMER: May I, Mr. President, in connection with this statement refer to an erroneous part of the record. During the cross examination of Defendant Goering on the 20th of March 1946, Document PS-3786, Exhibit USA-787 was presented. In the German record, page 5250, there ismention of how they were to be transported away, and then it says that the Fuehrer said they would have to go even if they walked in dreck, but in fact it says in the original minutes, "The y have got to fo, even if they have to trek to join a column." That is something quite different. One says, dreck, d-r-e-c-k, and one says trek, t-r-e-k.

I would therefore ask that the translation in the English which gives a completely different and quite erroneous impression should be rectified. As the witness has just said, the Fuehrer said, "They have got to go even if they have to march in a trek"-- that is a column -- "on foot".

THE PRESIDENT: Yes. Now, the Tribunal thinks that the best way to deal with these questions of translation is to take it up with the General Secretary and get it submitted to the Translation Division.

DR. STAHMER: Yes. I merely wanted to state my point of view.

BY DR. STAHMER:

Q Then there is supposed to have been a statement in the course of that conference, while transports were being mentioned, that the prisoners were to take off their boots when walking in the snow.

Do you remember who made that remark?

A No, I can't remember, and I consider that that is quite out of the question.

Q Don't you remember at all that such a remark wasmade? Who might have made it?

A It is perfectly possible that Fegelein said something like that in some connection or other; I don't know.

Q According to the record, Reichmarshal Goering is supposed to have made that remark.

A I consider that out of the question. May I, perhaps, in this connection mention that the stenographic,record, the taking down of minutes, presented a great deal of difficulty. During these conferences four to six

H0152-0027

people would talk at the same time, and very fast indeed, so that the stenographers could only write what they heard. They could neither look up nor check who had actually said the words they were taking down! There was a table around which there sat or stood some 30 people, and that, of course, made the work of the stenograhers most difficult.

DR. STAHMER: I have no further questions, Mr. President.

DR. LATERNSER (Counsel for the General Staff and the OKW): Mr. President, at this point of the trial I feel obliged to make a statement. I have a number of important questions which I ought to put to this witness, which I am not in a position to do because of the resolution passed by the Tribunal and announced today.

I state that through that decision --

THE PRESIDENT: (Interposing): Dr. Laternser, you will have full opportunity to put the questions to the witness before the Commission.

DR. LATERNSER: Mr. President, please may I complete my statement.

I have declared that because of the decision announced today I am not in a position to pose my questions, and that, of course, I submit to that decision of the Tribunal. I wish to stae, however, that with --

THE PRESIDENT: But it is inaccurate to say you are not in a position to put your questions. You are not able to put your questions to the witness now, but it is not true to say that you are not in a position to put your questions without further qualification. You are in a position to put your questions to the witness before the Commission.

DR. LATERNSER: Nevertheless, Mr. President, I feel there is an impediment for the defense, constituted by the fact that the defense of the organizations is therefore not in a position to collect itsimmediate evidence.

THE PRESIDENT: The Tribunal has announced its decision.

DR. LATERNSER: I only regret, Mr. President, that that decision was announced without the defense having first been heard.

DR. LOEFFLER(Counsel for the SA): I wish to add something to the statement of my colleague Laternser. I wish to emphasize another --

THE PRESIDENT:(Interposing) On what point, Dr. Loeffler?

DR. LOEFFLER: On the point that the witnesses who have been called today

H0152 - 0028

cannot be asked questions by the defense counsel for the organizations, as has been the custom until now, and that is a disadvantage to the defnense because in practice we lose these witnesses altogether.

THE PRESIDENT: Dr. Loeffler, you and Dr. Laternser seem not to have read Article 9 of the Charter, which provides that the Tribunal may direct in what manner the applicants shall be represented and heard. That is with reference to the organizations. The Tribunal, after very great trouble, has had brought to Nurnberg a very large number of witnesses and has set up commissions for the purpose of examining those witnesses, and they are going to hear some witnesses from among those witnesses at a future date in this court.

The Tribunal has given the matter full considerationand it doesn't desire to hear any further arguments from you or from any other of the counsel for the organizations.

DR. LOEFFLER: Mr. President, we respect the reasons of the Tribunal, but we feel obliged to point out that from the point of view of the defense these reasons are justified in theory, but that in practice they mean the loss of that witness, and I beg your permission to give you a very brief explanation so that the Tribunal will understand why we lose the benefit of those witnesses.

You, Mr. President, have said that the witnesses can be heard before this Commission, but they cannot be heard before the Commission.

THE PRESIDENT: The Tribunal, as I havetold you, has already considered this matter, and it may be that they will consider it further, but they don't desire to hear any further argument about it. It is a matter entirely within their discretion, and they have been at very great pains to provide that the applicants who wish to be heard in respect to these organizations shall be fully and thoroughly heard.

The Tribunal will not hear you further at this stage.

DR. LOEFFLER: May I permit myself to make a suggestion to you, Mr. President?

THE PRESIDENT: Did you hear what I said? I said the Tribunal will not hear you further at this stage.

DR. LOEFFLER: Very well.

H0152-0029

CROSS EXAMINATION

MR. ROBERTS: My Lord, I have only a few questions.

BY MR. ROBERTS:

Q Your memory of that conference doesn't appear to be at all clear.

A May I ask you which conference?

Q The conference that you last mentioned, with regard to the evacuation of the prisonersof Sagan.

A I am not aware of any point in which it is not supposed to be correct.

Q Well, but you say that you don't remember any mention being made of the prisoners having to walk through the snow without their boots on.

A Yes, that is what I said.

Q And you know that it is -- I can't find the actual place; I had no idea this exhibit was going to be referred to -- but you know that that is in the actual stenographer's notes, do you not?

A So it has been said.

Q Yes. And you would agree with me that the stenographer could hardly put that remark down unlesss it was said?

A Yes.

Q But you didn't hear the remark; therefore you don't know wo said it?

A Yes, that's right.

Q That is all I ask on that.

I just ask on one other matter: In April of 1945 did Fegelein attain the status of becoming Hitler's brother-in-law, when Hitler got married?

A Yes.

Q And two days afterward, was Fegelein shot on the orders of his new found brother-in-law?

A Yes.

MR. ROBERTS: That is all.

DR. JAHRREISS: Ihave no further question to the witness.

THE PRESIDENT: The witness can retire.

DR. JAHRREISS: With the permission of the Tribunal, I now call the witness PROFESSOR DR. SCHRAMM.

PERCY ERNST SCHRAMM, a witness, took the stand and testified as follows:

BY THE PRESIDENT:

Q Will you state your full name, please?

A Percy Ernst Schramm.

Q Will you repeat this oath after me:

I swear by God, the Almighty and Omniscient, that I will speak the pure truth and will withhold and add nothing.

THE PRESIDENT: You may sit down.

DIRECT EXAMINATION

BY DR. JAHRREISS:

Q Mr. Witness, were you in the Wehrmacht Operational Staff during this war?

A Yes. From March of 1943 I was a member of the Wehrmacht Operational Staff.

Q Until the end?

A Yes, until the end; that is to say, the beginning of May 1945.

Q What position did you have?

A During the entire time that I served in the Wehrmacht Operational Staff I was writing the war diary of that Staff.

Q Was there a special reason why you received that task?

A My appointment to the Wehrmacht Operational Staff was due to the fact that I was a professor of history in civilian life, at the University of Goettingen. At that time an expert was looked for who would guarantee the right quality for dealing with that task. At the suggestion of the Deputy Chief, Colonel-General Jodl then appointed me to that position.

Q If you were to write a war diary claiming, as a historian would, that it was correct, you would have to have an insight into all the events with reference to that staff, would you not?

A Yes, up to a point. I did not take part in the Fuehrer situation discussions, and I did not take part in the internal conferences. However, I participated daily in the situation conferences of the Wehrmacht Operational Staff, and all important documents passed through my office during those two years.

Q Mr. Witness, considering that you, more than anyone, had insight into the activities of the Wehrmacht Operational Staff, I should like you to tell us h here what you know regarding the extent of Colonel-General Jodl's activities/

A The Colonel-General's activities could not be considered large enough; and

H0152-0030

H0152 - 0031

I shall give you proof. In 1944 alone, in the telprint department of the Wehrmach Operational Staff, according to information I had from the officer in question, 60,000 teleprint messages went through their hands. After that there was a considerable correspondence, which, of course, was even larger. Then there was the internal work which went on between the individual departmants. The bulk of that written work came across the desk of the Colonel-General at one time or another.

On the other hand, the point is that the Colonel-General was concerned with four theaters of war: North, Finland and Norway; West, Holland, Belgium, France; Southwest, down to Africa and Italy; and then Southeast.

Q Please speak more slowly.

A It was the Colonel-General's task not only to keep himself informed currently on the strength of information which was coming in, but also, in consequence, as the operational advisor of the Fuehrer, to carry out that task.

Q Have I understood you correctly that the four theaters you have just mentioned were the so-called OKW theaters of war?

A Just as the East was under the General Staff of the Army. That meant that the Colonel-General was only partly concerned with it, as there were continuous

H0152-0032

difficulties in coordinating the interests of the various theaters of war, and coordinating them to the interests of the Eastern Front, too.

Q Did I understand you correctly that you mentioned 60,000 teleprint messages?

A Yes, 60,000. I remember the figure because my secretary worked out that 120 volumes of files passed through our office, which were that /indicating/ thick. Therefore, anything which came through my office could bemeasured in meters -- 12,000. Now, that is hundreds of thousands of sheets of paper.

Q Perhaps you may be able to help us with a question which has been repeatedly touched upon here but which has never been answered exactly.

Do you know anything about an order from Hitler prohibiting generals from resigning?

A Yes; I remember that very exactly, in great detail. That was an order which appeared in the middle of 1944, and which came out, at that time, in very severe wording. It mentioned that before my time -- during 1940 or 1941 -- there had been an order of that type. That order consisted of about one and a half typewritten pages . It used dynamic words and its contents are still clearly before my eyes because several comrades of mine and I discussed it afterwards.

The order indicated that any commanding officer and department under him would have the right to mention any objections he might have to measures of his leaders, but that he would then have to carry out the order unconditionally if it came from above; that is to say, he would have to do something which meant acting contrary to his intentions.

It added that it was impossible, as a consequence, for a supreme commander to declare his resignation. The reason given at the time was that the NCO'S in the trenches couldn't tell their company commanders that they wanted to resign when they didn't like the company commander's orders.

I repeat, it was so emphatically worded, that we talked about it a great deal, because, beginning from that moment, there was even less of a possibility for the supreme commanders to evade an order coming from above.

Q Professor Schramm, might I ask you to speak just a tiny bit more slowly?

H0152 - 0033

This order -- the contents of which you have just now described to us, and to which you have given, today, its final version -- did that order apply to a man like Colonel-General Jodl?

A If it applied to the supreme commanders, then of course it applied to Colonel-General Jodl all the more.

Q Another question. Colonel-General Jodl has been described as a political general. You are a civilian, and, what is more, a professor, and you, therefore, have the qualifications to express your views to such a statement. Also, you are able to state facts to this Tribunal which will make it possible for the Tribunal to pass a judgment upon thatpoint. Can you give us facts which might serve as proof, pro or contra, for such a judgement?

A If the question is put whether the Colonel-General was a Party general, then I will answer most emphatically "no." Whether themembers of his staff were Party members or not was utterly immaterial to the Colonel-General. Although I belonged to that staff for two years, I personally could not tell you whether, and who, of the members of the offices were Party members or not, because it was so utterly unimportant.

Therefore, the question in that sense, as to whether theColonel-General exercised political influence -- in that connection I draw your attention to the tremendous output that he was responsible for. Therefore he could not have had time, and I can only tell you, judging from my documents, that I haveno recollection from which you could draw such a conclusion.

What the Colonel-General has written down, and the papers I have seen, ran into the thousands. Also, he always entirely confined himself to military matters. He was carefully observing the dividing line between that and politics. To be more exact, I cannot remember ever having seen a document of a political nature which might have been written by order of the Chief of the Armed Forces Command Staff; not one, during the two years, did I see such a document in my files.

Q But then perhaps he had a dormant love for politics, and perhaps he wrote something like that which was outside of the files?

A I can answer that question of yours with a strict "no", because I know from his entourage, and from conversations that I had with him, that

H0152-0034

the entire diplomatic goings-on were consideredunpleasant by him, and that he didn't like them because he felt that he was a soldier and did not want to have any contact with such matters. Apart from that, he was much too busy.

I didn't notice any ambitions either, because if the Colonel-General had been ambitious, he would not have chosen a position which was the least suitable for such a purpose because it exposed him to criticism from below, frompeople who didn't know the deeper reasons. That meant that he was constantly criticized from below, and he was criticized from above, too. He was not getting the recognition he deserved.

I always thought it was peculiar that the Colonel-General, at the time Adolf Hitler died, did not have more German decorations than I myself, who was simply a major in the reserve. Whether he had foreign decorations I do not know because I never saw them with my own eyes.

At any rate, the evidence as to any political ambition has never appeared to me.

Q During this trial there has been direct mention of a speech made by the Colonel-General during the winter of 1943-1944, which he made before Gauleiters. I don't know whether you know of that.

A Yes, I remember it exactly.

Q What do you remember exactly?

A First of all, let me tell you that the reason why I remember it exactly is because I received the script for the lectures. After it was no longerneeded I was given it for my war diary, and it was very thick. That was a speech for which the material was collected in the various departments, and an enormous map was needed for it which was difficult to manufacture because it was larger than the rooms in which we were working. That was the speech on the 8th or 9th of November, on the occasion of that annual meeting in Munich.

The particular cause for a speech made by the Colonel-General outside the usual military circle was this.

In September of 1943, through Italy's dropping out of the war, the front in the South had been extended to a length of 4,000 kilometers from

H0152 - 0035

Marseilles to Athens. We had succeeded in filling the gap again, but all those who knew anything about the situation had considerable disquiet; they were most upset.

MR. ROBERTS: My Lord, I object to long reasons being given for the speech being made. The speech is in evidence, and, in my submission, the reasons for the speech are entirely immaterial.

H0152 - 0036

THE PRESIDENT: The Tribunal upholds the objection.

BY DR. JAHRREISS:

Q Witness, continue, please, to talk about the causes.

THE PRESIDENT: I said that the Tribunal upheld Mr. Roberts' objection as to what the witness must say.

DR. JAHRREISS: I am so sorry. I must say that I understood most directly and diametrically the opposite.

BY DR. JAHRREISS:

Q Witness, I am now going to have a document shown to you which was submitted to the Tribunal by the prosecution two days ago, PS-1808. Please, will you first of all glance through the document?

THE PTHE PRESIDENT: Is it among the Jodl documents?

DR. JAHRREISS: No; it is a document which the prosecution submitted during the cross examination two days ago.

MR. ROBERTS: My Lord, that document was handed up by me during the cross examination, and I am afraid it is not in the book. It is one of those documents which received a new GB number, and was handed up loose towards the end of the cross examination, PS 1808.

DR. JAHRREISS: Thank you.

THE PRESIDENT: Go on, please, Dr. Jahrreiss.

BY DR. JAHRREISS:

Q Witness, on the next to the last page, at the bottom, right, there is your signature; is that right?

A Yes. This is a file which I started after the 20th of July, 1944, so as to record what was being done in the operational staff. I want to add in this connection that the operational staff was in no way connected with that conspiracy. This copy presumably comes from the archives. The corrections are partly mine, and with my signature, and partly those of my secretary.

Q But then I want to direct your attention to the first number in this document.

A Yes.

Q It is dated the 25th of July. Do you have it?

H0152-0037

A Yes.

Q Did you write that?

A Yes, I wrote that personally.

Q Please, will you tell us what the basis for this work of yours was?

A The officers of the staff were called to our mess hall on short notice, and we heard that the colonel general wanted to address his staff. I then received the orders that all officers who could come were to take notes so that other officers could be instructed and be given notes on the colonel general's speech. I remember clearly that I was standing when I took down a few words, so that this is not a shorthand record, because I cannot write shorthand, and it was too late to get hold of one of the stenographers.

Q And now, on the basis of your notes, you worked out this document, did you?

A Yes. Later, probably the following day, as well as possible, I reconstructed what I had taken down in a few words. I am not absolutely certain as to whether I was completely accurate in the details of the colonel general's speech, because the notes which I had taken standing up were much too sketchy and short for that. And, of course, it is particularly doubtful how accurate I was regarding the actual words spoken. I can now see that there are four and a half pages, whereas that was, of course, a speech which was infinitely longer than that. It is a reconstructed representation, of course.

Q Now, I should like to know more about the circumstances under which that speech was made by the colonel general, because, after all, we do not have the record of the speech.

MR. ROBERTS: It is my respectful submission, again in the interests of saving time, that these circumstances are all very irrelevant. We know that an attempt was made on Hitler's life, and that Jodl addressed his staff. It is my submission that the circumstances are not relevant at all.

DR. JAHRREISS: Mr. President --

THE PRESIDENT: The Tribunal hopes you will do it briefly.

DR. JAHRREISS: Yes; thank you.

H0152 - 0038

BY DR. JAHRREISS:

Q Witness, please, will you be very brief and quote the personal circumstances?

A The colonel general appeared on the scene with white bandages around his head. We were all most surprised that the consequences of that attack, considering the circumstances, should have come about so quickly. At that time we were deeply impressed by the energy and the tenure with which he approached his staff at that time; and we were impressed by the moral attitude which he had with regard to such an attempt.

DR. JAHRREISS: Thank you, Mr. President. I have no further questions.

THE PRESIDENT: Do other defendants' counsel want to ask any questions?

(No response)

THE PRESIDENT: Does the prosecution want to?

MR. ROBERTS: My Lord, I have no questions.

THE PRESIDENT: The witness can retire.

DR. JAHRREISS: I have no further questions. May I now call my next witness, General Winter?

GENERAL AUGUST WINTER, a witness, took the stand and testified as follows:

BY THE PRESIDENT:

Q Will you state your full name, please?

A August Winter.

Q Will you repeat this oath after me:

I swear by God, the Almighty and Omniscient, that I will speak the pure truth and will withhold and add nothing.

(The witness repeated the Oath).

THE PRESIDENT: You may sit down.

DIRECT EXAMINATION

H0152-0039

BY DR. JAHRREISS:

Q Witness, did you take part in the beginning of the Russian campaign?

A Yes, I participated as the first general staff officer of Field Marshal von Runstedt's army group.

Q Witness, may I point out to you that I want you to allow a small pause between questions and answers? Would you also please generally speak more slowly?

Can you tell me what you, in a very responsible position, as the one you held, knew at the time about Hitler's reasons for the German attack on the Soviet Union? What was the official reason?

A Officially, my supreme commander-in-chief told me that the reason for the campaign, at the time, was an attack from Soviet Russia had to be expected within a short time, and that therefore this was a preventive measure.

Q And then you experienced the first battles, did you not?

A Yes, in the South. It was with the Ukraine Army group in the south.

Q After those first battles, you had a certain amount of experiences and impressions of the opponent, did you not?

A Yes.

Q Were they, general, such impressions that they could tally with that official reason, of a defensive war?

A It was the unified impression in the supreme command of the army group, including the supreme commander in chief and the deputy under my command that the reason given for thatcampaign was true. We had the definite impression at the time that we had hit on offensive preparations for an offensive campaign.

Q But did you have the facts on which you could base this impression?

A We had a number of facts which could back that impression according to our conception. May I quote them to you? First of all, there was the strength of the troops we were fighting, which, although I cannot give you figures now, was much larger than the figures we had been given when we had our briefing. Then there was a considerable force which was massed near the

H0152 - 0040

frontier. There was the unusual equipment of the armed forces, exceeding anything we had expected. And there was the comparatively strong group opposite the Hungarian border, which we could not explain to ourselves as a defensive force. And then, there is one most outstanding point, that at that time we found when we captured enemy staffs during the first few days th they had been active in a great deal of German or original Austrian territor, which, again, we could not really explain with purely defensive considerations Then there was a number of individual observations, which are not significant

Price

H0152-0041

Q. Mr. Witness, just now you quoted an outstanding symptom, as you call it, and you referred to this map question which you have described. Why is that particularly outstanding? Why is it more outstanding than the other things you have mentioned?

A. It is particularly remarkable that these units were equipped with maps, being, as they were, on the Russian front, which went far beyond the reconnaissance areas which would be necessary to cover for a defensive campaign, even if you admit that, after the beginning of the war, such reconnaissance in certain instances might have to go across the enemy border.

Q. There has been mentioned in this Court room the fact that after marching into the Ukraine our troops had found exceptional circumstances in the case of certain Ukrainian cities, specail circumstances. Do you know what I mean?

A. Yes, I quite realize what you mean. Such difficulties occurred to a tremendous extent when we approached Dnieper. I should imagine that that is the affair of the long distance Dnieper detonation, a blowing up which occurred to a very considerable extent in our fighting zone in the Kiev-Karkov-Cholltava area. They caused us a great deal of trouble and they forced us to adopt considerable counter measures at that time.

Q. Do you know whether that applies to Odessa?

A. I heard that things were blown up in Odessa but I can not tell you details.

Q. Do you know the details about Karkov?

A. I know the details for certain, because there was an episode which necessitated certain security measures. On the west border of Karkov there were long and serious battles and the divisional staff -- although I can't remember the number -- was destroyed and died because of such blowing up operations. This brought about orders for special safe-guarding and the search of any building which might be used for accommodating commanding staffs thereafter.

Q. Did you, Mr. Witness, actually handle a Russian map or see one which showed targets for such blowing up operations?

Price

A. No, I myself can't remember having seen such a map.

Q. Earlier you said that Field Marshal von Runstedt was your commanding officer. Who was your chief?

A. General of the Infantry von Sodenstern.

Q. If I remember correctly the, Field Marshal von Runstedt at that time retired or was retired, is that right?

A. Field Marshal von Runstedt, when the attack on Rostov failed in November, 1941, and after permission to retreat with his leading units had not been granted him by the OKH, made a report to the OKH, under which he came, in which he expressed himself and said that if there was lack of confidence in his leadership, then he would have to ask the Fuehrer to nominate a new commander for that Army group. The reason I so accurately remember the episode is because I myself drafted the telegram and the Field Marshal then made a personal addition to it. The telegram was dispatched in the evening and Hitler's answer, which meant his retirement or new post, came during the same night.

Q. So that his application was granted?

A. Yes, it was, but perhaps I maytell you that there was a subsequent episode to that affair, because a few days afterwards Hitler flew to Mariopol personally so as to inform himself on the spot about the actual situation. On the flight back from there, he visited the Poltava H.Q. of Field Marshal von Runstedt and there was an oral discussion during which Hitler -- I can't tell you for certain whether I witnessed this scene myself or whether the Chief Adjutant Oberst Schmundt told me about it immediately afterwards. I repeat, there was a personal discussion in the course of which Hitler again raised accusations against the Field Marshal to the effect that he had put that alternative question, and he told him: "I am not willing to tolerate any such applications to resign in the future. When I have made a decision, then the responsibility is transferred to me by it. I myself am not in a position to go to another superior, for instance, God Almighty, and tell him I am not going on with it because I don't want to take the responsibility." We considered

H0152-0043

that that scene at that time was of principal importance, and I may add that later orders on that question confirmed that impression.

Q. Do you know, Mr. Witness, whether Hitler, as far as that decision of his was concerned, in future would not tolerate such applications? Do you know whether he ever rescinded that decision?

A. No, he certainly did not, because, as I know, there were two occasions when corresponding orders were issued which made an application to resign, from a supreme commander or a leading officer, giving as the reason that he couldn't assume responsibility, prohibited. That was prohibited through those orders.

Q. I now come to another point. If I am properly informed, you were still in the Operational Staff in the latter part of the war, were you not?

A. On the 15th of November, 1944, I became the successor of General Warlimont, who had fallen ill. On that date I took over the business of that position. My appointment was dated the 1st of December, 1944.

Q. Mr. Witness, were you regularly present during the "situation conferences" with the Fuehrer?

A. Yes, I was there five out of seven days during the week.

Q. There has been a great deal about these conferences in this Court room, because many an event took place during them which is important for this trial; but up to now, no proper picture has yet been constructed of what it means, "situation conference". Can you explain to us the technique of such a conference? Tell us how long they laster, how many people were there?

A. These conferences were permanently arranged for every afternoon. There was a large number present; but then there was a second conference of a similar type which were not concerned with the one which took place at 2:00 o'clock in the morning, and I want to say, with reference to the latter, that only junior General Staff officers of the OKW reported with reference to these conferences.

MR. ROBERTS: Mr. President, in the interest of time, the defendant Jodl gave evidence as to these conferences and no one put one word of cross examination to suggest that his evidence was not accepted. Therefore, I would

H0152-0044

like to submit that this is pure repetition on a point which is not disputed.

THE PRESIDENT: The Tribunal does not wish to hear anything of a general or detailed nature about these conferences unless there is something in particular that you want to prove about them.

DR. JAHRREISS: Mr. President, so as to clarify matters, may I ask you at this time whether the objection raised by Mr. Roberts meant that in this case the rule applies that something which has not been touched upon during cross examination can be considered proved? I am nor sure whether I have made myself understood. The objection from the prosecutor apparently is based on the sentence that something which has been mentioned --

THE PRESIDENT: I don't think you need lay down any hard and fast rules, but General Jodl gave general evidence about the nature of these "situation conferences" and he was not cross examined on it. It doesn't seem at all necessary to go into the general nature of these conferences with any other witness.

DR. JAHRREISS: Thank you very much.

BY MR. JAHRREISS:

Q. Mr. Witness, it is possible in military life that an officer might receive an order about which he is of a different opinion, is it not?

A. Yes.

Q. Well, of course he has to obey, but does he have a possibility of putting his different opinion on record?

A. In the German Army, if I remember rightly, such a possibility is impossible. An order from Hitler which came out in '38 I think, the winter of '38 or '39, cancelled such a possibility once and for all. He published an order at that time prohibiting chiefs of general staffs and commanding departments from putting their different opinions on record.

Q. So that there are not any difficulties in the translation, will you please explain the word "Aktenkundig"?

A. I meant that it was not possible for the official files or the War Diary kept in any command staff to contain a note to the effect that the

H0152 - 0045

Chief was not in agreement with the decision or order of his superior. That possibility existed before, but since 1938 it no longer existed. It was prohibited.

Q. General, I am now going to have a document shown to you. D-606, another document which the prosecution has submitted during cross examination. I am afraid I don't know the exhibit number at the moment. Perhaps Mr. Roberts might know it.

MR. ROBERTS: Exhibit 492, My Lord, and I put it in separately in cross examination. It is in no book.

THE PRESIDENT: Go on, Dr. Jahrreiss.

BY MR. JAHRREISS:

Q. Witness, do you know this document?

A. I am acquainted with the document. It has got my file reference on it.

Q. Did you write it yourself?

A. No, Colonel General Jodl personally wrote it, but I can see a gap, on the other under, under Figure 11. I am not sure whether it is complete. The document consists of a preliminary draft, which is not contained in the one I have before me, but I can see that this is the file copy from my Quartermaster's Department, and that must have been together under the same file heading.

Immediately after the attacks on Dresden, Hitler had put the question of leaving the Geneva convention, and there was the question of dealing with this in my staff, and the decision we had was that all points of view should be underlines which would prevent the Fuehrer from coming to such a decision, that is,,of leaving the Geneva Convention. From the point of view of international law and from the point of view of the psychological effect on the enemy and on our own troops, this document was carefully worked out. I myself did it.

The following day, my chief, Colonel General Jodl, saw me. He had this document, the details of which I have not carefully examined now, and he told me that he was perfectly agreeable to this negative attitude but that he had felt obliged to complete all points even more clearly and to tally it with the information he had from the Navy and also to formulate it tactically in such a way that would guarantee its success with the Fuehrer, because it could not be allowed to happen that he might put his thoughts into practice.

DR. JAHRREISS: Thank you, Mr. President. I have not further questions to the witness.

THE PRESIDENT: Any other Defendant's Counsel want to ask questions?

DR. LATERNSER: (Counsel for the General Staff and the OKW): Mr. President, may I have your permission to ask whether the questions of not being allowed to put questions applies to this witness, and I want to point out that this witness is a member of the indicted group of the General Staff of the OKW.

H0152-0046

H0152 - 0047

THE PRESIDENT: I do not know whether he is or not, but it does not matter whether he is nr not. You can question him before the Commission. I mean, you can call him yourself before the Commission.

DR. LATERNSER: I merely wanted to clarify the matter by means of this question.

THE PRESIDENT: Dr. Laternse, if there is any witness who is not residing in Nurnberg, you can have him kept for the purpose of having him examined before the Commission if you want to do so.

MR. ROBERTS: My Lord, I only want to ask one question.

CROSS EXAMINATION

BY MR. ROBERTS:

Q. You have told us that Germany attacked the Soviet Union in breach of their non-aggression pact, because Germany feared an attack from the Soviet Union.

A. May I be more precise by saying that we, as General Staff officers in the Supreme Command and Army Group--the one that was stationed in the Ukraine, did receive that reasons from our senior officer.

Q. Very good. We know now from the evidence in this Court that Hitler decided in July 1940 to attack the Soviet Union; that on 18 December 1940-- it is page 53 of Book 7--that on 18 December, Hitler stated that the Wehrmacht must be prepared to overthrow Soviet Russia in a single rapid campaign. We know that the attack was not until 22 June. It dies not look as though the leaders of Germany were very much frightened, does it, of Russian breaking the non-aggression pact--the Soviet Union, rather.

(No response).

BY THE TRIBUNAL (Mr. Biddle):

Q. Witness, you had to take retaliation measures in the Ukraine, did you not?

A. We did not use reprisals, as far as the troops were concerned in the operational zone of the Ukraine; at least, I have

H0152 - 0048

no recollection of any such instances.

Q. What measures did you take against the resistance of the population?

A. During the entire campaign in which Army Group South was involved, a resistance of the population in the operational zone in the Ukraine was not apparent. Only in rear areas were there fights at that time with occasional troop units. A resistance on the part of the population did not occure, as far as I know, until later when the operational zone had already been limited, in the rear in the use of political commissioners.

Q. You were not there at that time?

A. The command staff to which I belinged was, in the early days of February 1943, taken back from the front.

THE PRESIDENT: The witness can retire.

DR. EXNER: Mr. President, finally, I have only two interrogatories which I have to submit to the Tribunal. I want to read a few lines from one of them, something which was forgotten.

First of all, the interrogatory, AJ-8, which I herewith submit to the Tribunal, and I beg the Tribunal to take judicial notice of its contents, and then there is AJ-6, an interrogatory of Brudermueller, with reference to which I wish to make a similar request.

Then, from the last to be submitted, AJ-12, General Greiffenberg's statement, I should like to quote the important part. It is questions concerning the attack against Jugoslavia and the question of whether, after the Simovitch Putsch, Jugoslavia had already taken a position against us. This is the third volume of the document book on page 211. The Simovitch Putsch was over, and the question not was whether there appeared to be an immediate threat from Jugoslavia at the time.

"Questions: Is it a fact that Jugoslvia, immediately after the coup d'etat of the army, started to deploy her armies on all her borders?

H0152 - 0049

"Answer: I know only the from which was opposite the German 12th Army, located at the Bulgarian border. Here the Jugoslavs had deployed their armies at the border.

"Question: Is it a fact that the army unit of which you were the commander at the time, had the order before the coup d'etat in Jugoslavia to respect strictly the neutrality of Jugoslavia during the pending attacks against Greece and that not even replacement trains should be despatched through Jugoslavian territory?

"Answer: I can testify that the strictest order had been given to respect Jugoslavia's neutrality.

"Question: Did you hear of any violations of this order?

"Answer: No".

Gentlementof the Tribunal, a number of interrogatories have not yet come in. Whether we are going to get them or not, I do not know, and at this moment I shall have to reserve to myself the right to submit them later. Apart from that, I have completed my case at this stage.

THE PRESIDENT: On Monday the Tribunal will hear the case of the defendant Seyss-Inquart, will it not?

Very well, the Tribunal may adjourn.

(The Tribunal adjourned until 10 June at 1000 hours).

H0152 - 0050

ERRATUM

Transcript, 8 June 1946, Morning Session

On page 11289 of the English transcript, morning session, the seventh paragraph down should be changed to read as follows:

The application of the defendant Goering for two witnesses, Stuckhardt and Burmath is granted, but on the condition that three witnesses only may be called upon the subject concerned.